

REMARKS

In the May 22, 2006 Office Action, claims 2, 12 and 20 are objected to for minor informalities; claims 1-6, 8-11, 18-22, 24 and 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 10013829 to Pfister; claims 1, 7 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 29515347 to Buker; claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buker and U.S. Pat. No. 1,139,119 to Heidenreich; claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister in view U.S. Pat. No. 2,879,066 to Sutherland; and claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister.

By the present amendment, claims 1-3, 7, 12, and 20 are amended, claims 25 and 28 are canceled, and new claims 29-33. That leaves claims 1-24, 26, 27, and 29-33 pending in this application with claims 1 and 29 being independent. Independent claim 1 is amended to clarify that the body is a unitary one-piece member with a substantially continuous outer perimeter. Dependent claims 2, 3, 7, 12 and 20 are amended to correct minor informalities.

The rejections over the prior art are respectfully traversed because the prior art fails to disclose, teach, suggest or render obvious all of the claim limitations of the claimed invention. In summary, neither Pfister nor Buker teaches or renders obvious a spinning top with a substantially continuous outer perimeter. Each rejected is addressed in detail below.

Claim Rejections – 35 U.S.C. 102

Claims 1-6, 8-11, 18-22, 24 and 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 10013829 to Pfister. However, Pfister fails to disclose all of the claim limitations of independent claim 1, as amended.

In particular, independent claim 1 recites that the body of the spinning top defines an outer perimeter that is substantially continuous. In contrast, the body 1 of Pfister is discontinuous because it includes a gap or opening 120. The opening 120 of Pfister receives the stem 112, as seen in Fig. 1A. Thus, the outer perimeter of the body 1 of Pfister is not substantially continuous.

Anticipation requires that every limitation of a claim must identically appear in a prior art reference. See *Gechter v. Davidson*, 43 U.S.P.Q. 2d 1030, 1032 (Fed. Cir. 1997). It is clear that the limitation of a body with an outer perimeter that is substantially continuous does not identically appear in Pfister. Absence from the prior art reference of any claimed element negates anticipation. See *Rowe v. Dror*, 42 U.S.P.Q.2d 1550, 1553 (Fed. Cir. 1997).

Accordingly, because Pfister fails to teach all of the claim limitations of independent claim 1, as amended, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. 102(b) in view of Pfister.

Moreover, it would not have been obvious to modify the body 1 of Pfister to be substantially continuous because that would render the top of Pfister inoperable for its intended purpose. More specifically, the body 1 of Pfister must include gap 120 and be discontinuous in order to receive stem 112 when it is rotated.

Claims 1, 7 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 29515347 to Buker. As discussed above, independent claim 1, as amended, recites that the body defines an outer perimeter that is substantially continuous. Buker fails to teach a top with a body having a substantially continuous outer perimeter. Instead, the body of Buker is formed of two pieces 1 that do not engage one another, thus forming a discontinuous outer perimeter. The two pieces 1 of Buker do not engage one another because a stem 2 is

disposed therebetween, as seen in Figs. 3 and 4. Thus, a gap is located between the two pieces 1 to accommodate the stem 2.

Additionally, independent claim 1, as amended recites that the body is a unitary one-piece member. In contrast, the body of Buker is formed of two separate pieces 1, as discussed above.

Accordingly, a unitary one-piece body defining a substantially continuous outer body, as recited in independent claim 1, does not identically appear in Buker. Therefore, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. 102(b) in view of Buker.

Moreover, it would not have been obvious to modify Buker to have unitary one-piece body defining a substantially continuous outer body because such a modification would render Buker inoperable. More specifically, Buker must be two pieces and discontinuous in order to the stem 2.

Dependent claims 2-24, 26 and 27 are also allowable over Pfister and Buker for the same reasons discussed above. Moreover, these claims recited additional features not found in the prior art.

Claim Rejections – 35 U.S.C. 103

Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buker and U.S. Pat. No. 1,139,119 to Heidenreich. As discussed above with respect to independent claim 1, Buker fails to disclose all of the claim limitations of the claimed invention. Heidenreich fails to cure the deficiencies of Buker. Thus, a prima facie case of obviousness is not established with respect to dependent claims 12-17.

Therefore, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. 103 over Buker and Heidenreich.

Regarding the rejections of claims 25 and 28, both of these claims are canceled.

New Claims 29-33

New independent claim 29 recites a spinning including, among other elements, a body, a stem, a first latch member extending from the stem and a second latch member extending from the body, wherein the first and second latch members are engageable to prevent rotation of the stem with respect to the body.

Neither Pfister nor Buker discloses latch members. Although the stem 11 of Pfister includes pins received in openings of the body 12, the openings do not extend from the body, and the engagement of the pins in the openings actually allow rotation of the stem 11 with respect to the body 12, and does not prevent rotation. And although the device of Buker includes an elastic band 3 around the two pieces 1 and the stem 2, the band does extend from either the stem 2 or the pieces 1.

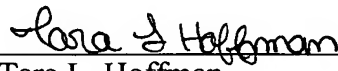
Accordingly, Applicant believes new independent claim 29 is allowable over both Pfister and Buker. Moreover, new dependent claims 30-33 are also allowable over Pfister and Buker for the same reasons and also recite additional features not found in the prior art. For example, claim 30 recites that the first and second latches are tabs that engage one another; claim 31 recites that the body is a unitary one-piece member having a substantially continuous outer perimeter; claim 32 recites that the stem includes at least one transverse arm portion; and claim 32 recites that the body includes first and second recesses from receiving the stem and arm portion.

In view of the foregoing, Applicant believes claim 1-24 and 26, 27, and 29-33 are in allowable condition.

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